HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1374 of 2006

Between:

N. Hemalatha

... Appellant

And

A.P. Cooperative Tribunal, Visakhapatnam,
Rep., by its Chairman and two others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri Peri Prabhakar for
Shri V. Venkataramana

December 29, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 20-10-2006 passed by the learned Single Judge in WPMP No. 30742 of 2006, whereby he stayed the execution proceedings in case No. 18753/2000-01 dated 23-04-2001 and auction notice in CEP No. 5309/2001-02 dated 05-03-2003 pending with Special Cadre Deputy Registrar – Officer on Special Duty, District Cooperative Central Band Limited, Kakinada, East Godavari District subject to the condition that the petitioner (appellant herein) deposits half of the amount due as on date within six weeks.

The appellant is a member of Gandepalli Primari Agricultural Cooperative Credit Society Limited, Gandepalli, East Godavari District (for short, 'the society'). She took loan from the society for drip irrigation, tube-well and submergible pump sets by mortgaging her property situated in Singarampalem Village of East Godavari District. On account of the appellant's failure to repay the loan, the society filed an application under Section 71 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') before the Special Cadre Deputy Registrar-Officer on Special Duty, District Cooperative Central Bank Limited, Kakinada. The latter issued certificate for recovery of Rs.5,13,147/- with interest @ 18.5% per annum. After some time, the society filed execution petition under Rule 52 of the Andhra Pradesh Cooperative Societies Rules, 1964. The Deputy Registrar, Cooperative society accepted that application and issued sale notice dated 05.03.2003.

The appellant challenged the sale notice by filing an appeal under Section 71 of the Act, which was dismissed by the Andhra Pradesh Cooperative Tribunal at Visakhapatnam (for short 'the Tribunal) vide its order dated 16.10.2006. The Tribunal held that the recovery certificate was issued by the Special Cadre Deputy Registrar after following the relevant statutory provisions and there was no valid ground to nullify the same. The Tribunal also took cognisance of the statement made by the appellant's counsel that his client is ready and willing to pay the loan amount if the society provides the loan particulars and disposed of the same by making the following observations:

> "During the course of arguments, the learned counsel for the appellant submitted that the appellant is ready to pay the loan amount to the society if the society provides the loan particulars. If the appellant has real intention to pay the

overdue loan to the society, the appellant is always at liberty to verify her loan account from the loan ledger register of the society at any time during office hours on any working day. As per Section 119 of the APCS Act, the books of the society are open to the members of the society."

In the writ petition filed by her, the appellant challenged the recovery certificate dated 23.4.2001 and auction notice dated 05.03.2003. Along with the writ petition, she filed W.P.M.P.No.24083 of 2006 for stay of the execution proceedings. The learned Single Judge entertained the writ petition filed by the appellant and passed conditional stay order to which reference has been made hereinabove.

Shri Peri Prabhakar, learned counsel for the appellant made efforts to persuade us to modify the order of the learned Single Judge by stating that the appellant is a poor agriculturist and she is not in a position to deposit 50% of the total amount due as on date, which comes to more than Rs.24,00,000/-.

In our opinion, the interlocutory order passed by the learned Single Judge does not suffer from any legal infirmity warranting interference under Clause 15 of the Letters Patent. If the amount of interest is added to the loan taken by the appellant from the society, then as on today she must be under the liability of Rs.20,00,000/- and we do not see any reason or justification to deprive the society of its legitimate right to recover the loan amount together with interest. The litigious perseverance of the appellant has paid rich dividend to her so far, inasmuch as she has succeeded in preventing the society from making recovery of the amount due. Even the learned Single Judge has shown extreme compassion by staying the execution proceedings subject to the condition of deposit of 50% amount.

Without commenting further on the merits of the case, we are

convinced that the order passed by the learned Single Judge does not suffer from any infirmity whatsoever and the appeal is liable to be dismissed with costs. Ordered accordingly. The appellant shall pay costs of Rs.5,000/- to the society.

As a sequel to dismissal of the writ appeal, WAMP No. 2877 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

December 29, 2006
Ks/ksld